

## DETAILED ACTION

### *Response to Amendment*

1. In response to applicant's amendment filed, 05 February 2009, of application filed, with the above serial number, on 12 January 2004 in which claims 7-15, 17-18, 23, and 39 have been amended, claims 44-47 have been added and claims 1-6, 16, 19-22, 24-38, and 40-43 have been cancelled. Claims 44-47, 7-15, 17-18, 23, and 39 are pending in the application.

2. The amendment *originally* filed on 26 September 2008 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because new independent claims 44-47 are drawn to a non-elected invention. Claims 44-47 are directed toward distribution method control based on reproduction limitations and client reproduction and confirmation units and lacks the distribution management server of the elected invention. Applicant argues, in substance, that new claim 44 is similarly directed toward content distribution, management, and receipt based on usage control information and similarly includes a client apparatus and distribution server as in claim 1 and dependent claim 6. In particular, new claim 44 presents:

44. A content usage management system comprising:

a client apparatus that reproduces distributed content; and  
at least one distribution server, wherein  
said client apparatus includes a usage control data receiving unit operable to receive  
usage control data including a key used for reproduction of the distributed content from said at  
least one distribution server, and a reproduction unit operable to reproduce the distributed  
content using the usage control data, and

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said at least one distribution server includes a confirmation unit operable to confirm whether the content distributed to said client apparatus is content having a limited number of reproduction times or not, and a usage control data distribution unit operable to

(a) distribute the usage control data by a unicast distribution method where the usage control data is distributed in response to a request from said client apparatus, when the number of reproduction times of the content is limited, and

(b) distribute the usage control data to a plurality of client apparatuses including said client apparatus by a multicast distribution method where the usage control data is distributed to said plurality of client apparatuses simultaneously at a predetermined distribution time, when the number of reproduction times of the content is not limited.

While corresponding claim 1 and claim 6 (wherein claim 2 which claim 6 depends is largely irrelevant) of the elected invention presents:

1. A content usage management system for distributing, via a network, usage control data for controlling a content use in a client apparatus, comprising:  
one or more distribution servers for distributing the usage control data to the client apparatus by a plurality of different distribution methods; and  
a distribution management server for determining a distribution method out of the plurality of distribution methods for distributing usage control data of each content according to attributes of said each content, wherein one of the distribution servers distributes the usage control data by the determined distribution method.

6. The content usage management system according to Claim 2, wherein each of said one or more distribution servers includes at least one of the following units:  
a unicast distribution unit operable to distribute the usage control data by a unicast distribution method for distributing data in response to a request from the client apparatus; and  
a multicast distribution unit operable to distribute the usage control data by a multicast distribution method for distributing data all at once to a plurality of client apparatuses at a predetermined distribution time.

Thus as can be seen and as Applicant remarked, the *only* similarities between claim 1 and 44 are a client apparatus and distribution server. The client apparatus of claim 44 reproduces distributed content, whereas the respective claim 1 has the client apparatus only receiving usage control data. Claim 1 has an entirely different structure having a distribution management server determining the distribution method, whereas claim 44 teaches each distribution server does the determination. Claim 44 teaches a confirmation unit determining whether the distributed content has a limited number of reproduction times or not, claim 1 and 6 do not touch on these aspects. While Applicant may argue the new claims to only be more narrow in scope and to distinguish over the

prior art, as showed, the claims have very little in common with a different structure and separate functionality.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 44-47, 7-15, 17-18, 23, and 39 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY G. TODD whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. G. T./  
Examiner, Art Unit 2457

/Salad Abdullahi/  
Primary Examiner, Art Unit 2457